IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. 10-0027

IN RE THE GRANDPARENT-GRANDCHILD
CONTACT OF

W.B.S., AND D.C.S.,

Minor Children,

TANYA N. SPAULDING,

Appellant,

-and-

SHARON K. SNYDER,

Appellee.

On Appeal from the Thirteenth Judicial District Court
Yellowstone County, Montana
Cause No. DR 07-943, Judge Gregory R. Todd
IN RE THE VISITATION OF W.B.S., AND D.C.S., Minor Children,
SHARON K. SNYDER, Petitioner -and- TANYA N. SPAULDING, Respondent.

APPELLANT'S REPLY BRIEF

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COMES NOW the Appellant, Tanya N. Spaulding, acting by and through her attorney of record, Benjamin J. LaBeau, and respectfully submits Appellant's Reply Brief addressing only new matters raised in the Brief of Appellee.

1. TABLE OF CONTENTS.

2. STATEMENT OF NEW MATTERS RAISED BY APPELLEE.

1. Appellee/Grandmother/Sharon states that Appellant/Mother/Tanya learned about the infamous book written by Sharon only after she stopped the grandparent contact. (Appellee's Brief pp. 10-11, 20).

This is not true. Tanya learned about the book before she stopped the visits. The revelations in the book were a "last straw" in a series of events that led her to decide to stop the visits.

2. Sharon states in her Brief that virtually all of this litigation is "spawned by a work of fiction." (Appellee's Brief p. 10).

This is not true. The manuscript in evidence was a real life report by Sharon reflecting her true beliefs.

3. Sharon states that the Court applied the standard requested by Tanya, and

not the standard of § 40-4-219, MCA.

This is not correct. The Court discounts any happenings before the stipulation and requires to meet the "substantial change of circumstances since the stipulation" standard.

4. Sharon states that Tanya would not allow the children to testify or be interviewed by the Court. (Appellee's Brief p. 10).

This is a disturbing allegation. Sharon blames Tanya for denying an oral request for an interview one day before trial. Sharon could have applied to the Court for an interview of the children under § 40-4-214, MCA, she could have taken the deposition of the children, or she could have compelled the attendance of the children at trial by issuing subpoenas upon them. She did none of these things as evidenced by a complete absence in the record of any motion for interview, notice of taking deposition, or service returns for subpoenas.

5. Sharon states that Tanya does not appeal the order holding her in contempt. (Appellee's Brief p. 3).

Tanya does appeal this and relates that in issue 3, of her original Appeal Brief. She indicates the Court misapprehended the evidence, when it denied Tanya's motion and granted Sharon's cross-motion holding her in contempt. Had the Court applied the correct standard, Tanya would never have been found in contempt for protecting

her children.

6. Sharon asserts that Tanya's Constitutional challenges were not preserved and should not be considered. (Appellee's Brief p. 24-25).

Despite Sharon's position that Tanya's Constitutional challenges raised in issues 4 and 5 of her Appeal Brief, were not preserved; the challenges are valid.

3. APPELLANT'S RESPONSE TO NEW MATTERS RAISED BY APPELLEE.

1. Sharon's new claim, at pages 10-11 and 20, in her Response Brief, that Tanya found out about Sharon's infamous book after she stopped the grandparent contact is false. Sharon's book reveals her beliefs that her grandson W.B.S. is a "Crystal Child" and that she changed into a new being called "Sarah" after she overdosed on pills.

Tanya received the book from Sharon's daughter in July 2009. (Condensed Transcript of Hrg., p. 116., l. 1-5). Tanya stopped Sharon's contact with her children in August 2009. (Condensed Transcript of Hrg., p. 29., l. 21-23). Sharon's daughter, Pamela Wright, gave Tanya a book that Sharon wrote about her life story. (Condensed Transcript of Hrg., p. 19, l. 25; p. 20, l. 1-4; Trial Exhibit A, admitted in Hrg. Transcript p. 121, l. 12-15, p. 122, l. 19). The book disturbed Tanya a great deal because it reveals Sharon's belief that W.B.S. is a "crystal child" with psychic

powers. (Affid. of Tanya Spaulding, 9/11/09, p. 2). The manuscript also reveals that Sharon believes she was reborn as another person after her suicide attempt. The chronology of Tanya learning about Sharon's book is documented in Tanya's Affidavit dated March 10, 2009, at page 2, #7-9.

2. Sharon states Tanya's fears are "spawned by a work of fiction." (Appellee's Brief p. 10). This is not true. The manuscript in evidence was a real life report by Sharon reflecting her true beliefs.

The manuscript of "The Unexpected Walk-In," written by Sharon and admitted as Exhibit A at hearing describes the life of Sharon Snyder. (Condensed Transcript of Hrg., p. 75, l. 22-25; p. 76, l. 1-2). When asked at trial if felt she was reborn as "Sarah" after trying to commit suicide, Sharon testified, "A little, yeah." (Condensed Transcript of Hrg., p. 75., l. 14-18).

Sharon believes that her grandson W.B.S. is a "crystal child." (Condensed Transcript p. 83., l. 8-14). On August 17, 2009, she calls her grandson a "crystal child" in an e-mail to Tanya. (Condensed Transcript of Hrg., p. 83., l. 24-25.; p. 84., l. 1-4). In a letter dated August 19, 2009, Sharon proclaims unequivocably that W.B.S., is a "crystal child." She intends to guide him "as he grows in his abilities" and actively participate in his destiny as a "crystal child." (Condensed Transcript of Hrg., p. 84., l. 18-22; Trial Exhibit C, admitted in Transcript p. 37, l. 19). While

Sharon's book was published as a work of fiction later on, it does not mean Sharon did not believe that is it true. Clearly, she did.

3. Sharon states that the Court did not apply the standard of § 40-4-219, MCA, but rather applied the standard requested by Tanya. The Court gives its ruling at pages 118 through 121 of the condensed transcript of hearing. Tanya stated at hearing, as did her attorney, that a parent should not be trumped by a grandparent when it comes to making parenting decisions.

According to Sharon, Tanya identified at hearing a clear standard to be applied. Sharon inserted two pages of transcript into her Response Brief, that apparently identify that clear standard. To the contrary, Tanya asserts that the Court must determine parental fitness, then afford a parental presumption in favor of fit parents. (Condensed Transcript of Hrg., p. 10., l. 10-16). Sharon asserts that nothing in the grandparent rights statute talks of modification. (Condensed Transcript of Hrg., p. 9., l. 5-10). The Court asserts there is no specific statutory guidance to either modify, negate, or void a stipulation for grandparent contact. (Condensed Transcript of Hrg., p. 119, l. 22-24).

Nobody at the District Court hearing knew how to modify a grandparent contact order once established. The statutory framework does not address how it is to be done. However, constitutional rights and due process associated therewith

cannot be thrust aside because of a deficient statutory scheme. A mother must still parent a child and make decisions believed to be best for a child.

Sharon's claim that all of Tanya's asserted standards were applied and followed, yet not met is a claim contradicted when the Court discounts any happenings before the stipulation and requires to meet the "substantial change of circumstances since the stipulation" standard.

4. Sharon touts the fact that Tanya would not allow the children to testify or be interviewed by the Court. (Appellee's Brief p. 10). This is disturbing because while it is true that when asked one day before trial, Tanya said she did not want her children interviewed, Sharon had multiple ways to compel an interview or illicit testimony from the children. They simply did not do so, as is it the common practice not to drag children into Court.

However, for Sharon to have every right and opportunity to compel attendance of the children by subpoena or formal request to the Court and not do so; and then to condemn Tanya as interfering in their right to present evidence is at best misleading. Should a parent be penalized for not dragging their child into a courtroom to be put through the rigors of contested courtroom advocacy? Sharon and the District Court both criticize Tanya for saying, "No!" This is improper when they did not exhaust available remedies to accomplish attendance.

5. Sharon states that Tanya's issues presented in her Appeal Brief do not appeal the order holding her in contempt. However, Tanya states in issue 3 of her Appeal Brief that the Court misapprehended the evidence then found her in contempt.

If Tanya is correct in her assertion that the Court should have made a fitness determination followed by a presumption of correctness in favor of Tanya, and that all facts and circumstances prior to the stipulation should have been considered by the District Court, then both of the Court's initial rulings, the denial of Tanya's motion and the granting of Sharon's motion, would likely be flip flopped.

Tanya's 3rd issue on appeal requests review on the basis that the District Court misapprehended the evidence presented. She requests reversing the denial of her motion because there was clear and convincing evidence to support her motion. Likewise, she requests reversal of the Court's order holding her in contempt because insufficient evidence supported that claim under the circumstances at hand.

6. Sharon asserts that Tanya's Constitutional challenges were not preserved and should not be considered. However, until trial, Tanya had no idea the Court would apply anything but the analysis for a contested grandparent contact Petition opposed by an objecting parent contemplated in § 40-9-102(2), MCA. Tanya outlined that analysis for the Court and counsel in her Brief supporting her original Motion to Terminate Grandparent Contact identifying the *Troxel and Polasek*

application of § 40-9-102(2). She asserted the Court was required by statute to determine the fitness of an objecting parent whose parental rights have not been terminated before a court may grant a petition for grandparent contact. *Polasek*, ¶ 15; § 40-9-102(2), MCA. She asserted the presumption arising in favor of a fit parent's wishes. *Polasek*, ¶ 15.

Sharon's Response to Motion to Terminate Grand-Parent Contact and Cross-Motion for Contempt nowhere asserts a different standard or challenges the applicability of Tanya's asserted standard. Sharon simply states, "The motion is not well taken and should be denied." (See Response to Motion to Terminate Grand-Parent Contact and Cross-Motion for Contempt in District Court record). Tanya had no knowledge at this time of her Constitutional challenge. She believed the grandparent contact petition process would start anew since she objected, and no hearing on fitness and no analysis under § 40-9-102(2), MCA, had ever occurred in the case.

Not until the events at hearing on December 21, 2009, did Tanya know that Sharon would assert a different standard and that the Court apply a different standard. The Court's December 30, 2009, Order appealed in this case, concluding that § 40-9-102, MCA, did not apply to the case, is what led to Tanya's Constitutional analysis of the statutes. The Court did acknowledge a mother's right to modify or negate a

stipulation for grandparent contact, but applied parenting plan modification standards of instead of grandparent contact standards of § 40-4-219, MCA. (Condensed Transcript p. 120., l. 7-16).

Accordingly, until hearing, Tanya did not have questions about the constitutionality of Montana's Grandparent Contact Act.

Rule 24(d), M.R.Civ.P., states:

> When the constitutionality of any act of the Montana legislature is drawn in question in any action, suit or proceeding to which neither the state nor any agency or any officer or employee thereof, as such officer or employee, is a party, the party raising the constitutionality of the act shall notify the Montana attorney general and the court of the constitutional issue.

Likewise, Tanya had nothing to notice until after trial. In her appeal she provided notice required by M.R.App.P. 27, to the Supreme Court and to the Montana Attorney General with respect to a challenge to the constitutionality of Montana's Grandparent Contact Act. Since she has complied with notice required by the appellate rules, her Constitutional challenges raised in issues 4 and 5 of her Appeal Brief, are preserved and valid and should be considered.

4. SUMMARY AND CONCLUSION.

Sharon's claim that Tanya knew about Sharon's infamous book only after she stopped the grandparent contact is false. Tanya got the book in July of 2009, and stopped visits in August 2009.

Sharon's claim that virtually all of this litigation is "spawned by a work of fiction," is by her own mouth false. Her manuscript admitted at trial was her life reported firsthand, reflecting her true beliefs.

Sharon's claim that the Court applied the standard requested by Tanya, and not the standard of § 40-4-219, MCA, is not correct upon reading the transcript of hearing.

Sharon's claim that Tanya would not allow the children to testify or be interviewed by the Court is misleading. She had recourse to motions and subpoenas which she neglected to use.

Sharon states that Tanya does not appeal the order holding her in contempt, but issue 3, in Tanya's Appeal Brief, assert Tanya's position that the Court misapprehended the evidence, when it denied Tanya's motion and granted Sharon's cross-motion holding her in contempt. This is an effective appeal.

Sharon's claim that Tanya did not preserve her Constitutional challenges by serving Rule 24(d), M.R.Civ.P., notice upon the Montana Attorney General during the proceeding fails to consider that no Constitutional questions had yet arisen. When the issues arose during trial, notice required by M.R.App.P. 27, to the Supreme Court and to the Montana Attorney General challenging Montana's Grandparent Contact Act was given.

Tanya's six issues raised on appeal should be considered by this Court.

DATED this 5th day of May, 2010.

Benjamin J. LaBeau
Counsel for Appellant

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Appellant's Brief was served by first class mail, postage prepaid, upon the attorney for the Appellee this 5th day of May, 2010, addressed as follows:

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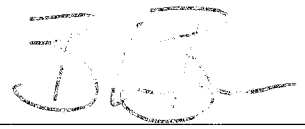

Benjamin J. LaBeau

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(d) of the Montana Rules of Appellate Procedure, I certify that this Reply Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced, and the word count calculated by Corel WordPerfect 12 for Windows, is 2344 words, excluding the Table of Contents; Certificate of Service; and Certificate of Compliance.

DATED this 5th day of May, 2010.

Benjamin J. LaBeau